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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,494	07/22/2002	Wataru Nakazawa		4851

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FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

CLEMENT, MICHELLE R

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/064,494

Applicant(s)

NAKAZAWA, WATARU4

Examiner

Michelle (Shelley) Thomson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 1/19/05 have been fully considered but they are not persuasive. Since applicant's arguments are directed solely to the claims as amended they are persuasive in overcoming the 35 U.S.C. 103(a) rejections over Hiramoto and Masuda. With respect to applicant's arguments concerning Budwig, applicant has taken the quoted statement out of context and has misapplied it to refer to the grommet remaining in place on the fabric. This is misapplied in that the invention of Budwig is directed to only the grommet, not to the grommet and fabric. "The grommet is formed of elements which incorporate interlocking means which insure *mutual retention of the grommet elements when the elements are forced together*, thereby providing a grommet which may be depended upon to remain in place after installation" (column 1, lines 15-20). There is no mention of, or teaching of, the grommet remaining in place with the fabric. This is further illustrated at column 2, lines 51-54 "the plastic material [of the grommet] may be so selected as to bond readily to itself by an adhesive or a solvent". Budwig does not disclose or teach anything about the grommet that would prevent the grommet from rotating within the hole of the fabric sheet (as other grommets do, for instance see Shibuya et al. (US Patent # 6,757,945), included herein for applicant's reference). The ability of the grommet to rotate within the hole of the fabric is dependant on the fabric and the size of hole in the fabric (just like in the present application). If one using the grommet of Budwig chose a thinner fabric or a larger hole the grommet would rotate easily within the hole, yet if one chose a thicker fabric or a smaller hole the grommet would not rotate as easily. Similarly in the present application, if one chose a thicker fabric or a smaller hole the grommet would not rotate as easily. Although

Art Unit: 3641

applicant claims the spacer is configured to rotate, there is no structural element of applicant's attaching structure that allows such rotation, it is merely choosing a larger hole in the fabric or thinner fabric. Since applicant has not claimed the attaching structure in combination with a fabric sheet but has merely stated an intended use for the claimed attaching structure, the thickness of the fabric or the size of the hole cannot be relied upon to patentably distinguish the current application from that of the prior art.

2. Applicant's remaining arguments have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Scalise (US Patent # 5,362,187). Scalise discloses an attaching structure comprising a spacer, the spacer having a cylindrical portion for receiving a threaded fastener, an end of the spacer can be in contact with a vehicle body and another end of the spacer is provided with a flange (See examiner's notes on Figure 6). Although Scalise discloses the attaching can be used for attaching a fabric sheet to a vehicle body (column 1, line 14) by inserting a threaded fastener through a hole of the fabric sheet, it is noted that the a) statements of intended use or field of use, b) "adapted to" or "adapted for" clauses, c) "wherein" clauses, or d) "whereby" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended

Art Unit: 3641

use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

The flange is integrally formed with the cylindrical portion, the spacer includes a spacer rear body in contact with a fixed substrate that could be a vehicle body and a spacer front body to be connected with the spacer rear body, the spacer front body includes the flange, and the spacer rear body includes an enlarged portion larger than the hole of the fabric sheet, the enlarged portion being located between the vehicle body and the fabric sheet. The spacer includes a tacking member for tacking the spacer rear body to the vehicle body so that the tacking member engages with an engaging hole in the vehicle body. The figures clearly show a clearance between the spacer and the hole of the fabric sheet, which would allow the spacer to rotate within the hole of the fabric sheet.

### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3641

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al. (US Patent # 6,508,486) and Budwig (US Patent # 3,091,795). Welch et al. discloses a structure for attaching a cushion (i.e. fabric sheet) (reference 40) to a vehicle body in which the fabric sheet is attached to the vehicle body by inserting a threaded fastener through a hole of the fabric sheet and screwing the stud into a fastening hole formed in the vehicle body, wherein the structure comprises: a fastener (reference 90) (i.e. a spacer) including a grommet and foam collar (a grommet is a spacer positioned in a hole of the fabric sheet, a grommet has a cylindrical portion inserted in the hole, the diameter of the cylindrical portion being smaller than the inner diameter of the hole (otherwise, the cylindrical portion could not be inserted in the hole), the ends of a grommet are provided with flanges that have a diameter larger than the diameter of the hole) (column 5, lines 4-15), wherein the stud (reference 93) is inserted into the cylindrical portion (column 5, line 11), and wherein the end of the spacer is in contact with the vehicle body (reference 26). Although Welch et al. does not expressly state that the stud (reference 93) is threaded, Welch et al. discloses that one end of the stud is adapted to receive a nut. Webster's New Riverside University Dictionary © 1994 defines **nut** as: "a small block of wood or metal with a central, *threaded* hole that is designed to fit around and secure a bolt or screw." Although Welch et al. does not expressly disclose the specific details of the grommet, Budwig does. Budwig teaches a grommet wherein the flange is integrally formed with the cylindrical portion, the grommet includes a rear body and a front body to be connected with the rear body, wherein the front body includes the flange and the rear body includes an enlarged portion larger

Art Unit: 3641

than the hole in the fabric (Figure 5). Budwig and Welch et al. are analogous art because they are from similar problem solving areas: reinforcing holes in fabrics. Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the specifics of the grommet as taught by Budwig with the fastening structure as taught by Welch et al. The suggestion/motivation for doing so is found in Welch et al. column 5, lines 4-6. Welch et al. and Budwig disclose the claimed invention except for the grommet expressly being rotatable within the hole of the fabric sheet. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the hole in the fabric large enough for the grommet to rotate, since it has been held that were the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al. as applied to claim 1 above, and further in view of Kalendek et al. (US Patent # 6,450,529).

Although Welch et al. does not expressly disclose an opening in the fabric sheet located in an edge portion of an airbag that is intended to protect a vehicle occupant's head, Kalendek et al. does. Kalendek et al. teaches an inflatable side air bag curtain that is intended to protect a vehicle occupant's head (Figure 6), the curtain comprises fabric panel comprising tabs (reference 39) with openings (reference 40) along an edge portion for mounting. Kalendeck et al. and Welch et al. are analogous art because they are from the same field of endeavor: inflatable air bags. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the openings along an edge portion as taught by Kalendeck et al. with the fastener including grommets as taught Welch et al. for an inflatable air bag; the

Art Unit: 3641

suggestion/motivation for doing so would have been to obtain an air bag that could be attached to a structure without tearing.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shibuya et al. (US Patent # 6,757,945).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Thomson whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 3641

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mrt

A handwritten signature in black ink, appearing to read "M. Thompson". The signature is written in a cursive, flowing style.

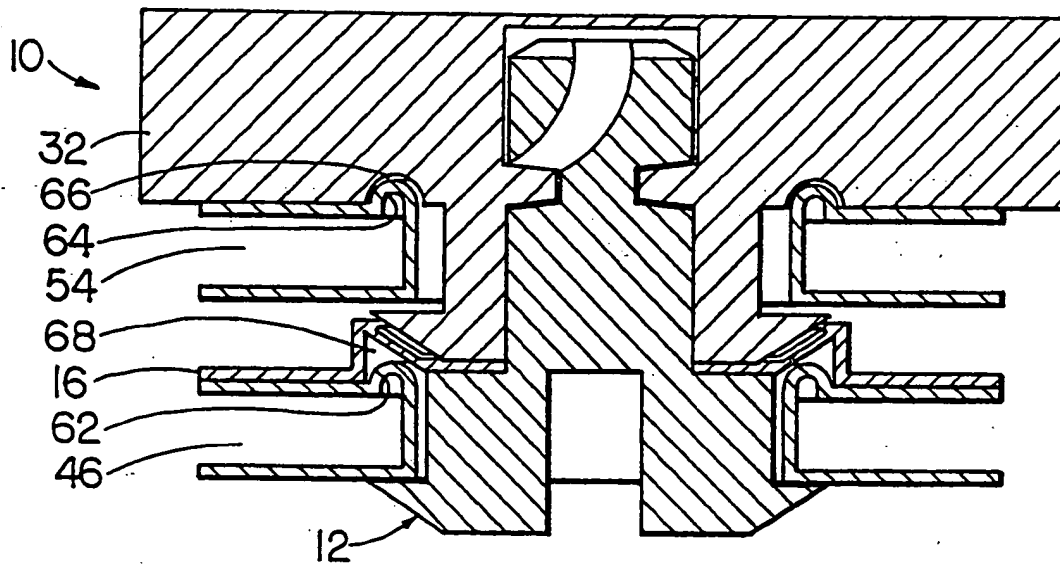


FIG. 5

